



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0389; FRL-9949-66-Region 2]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; NJ; Infrastructure SIP Requirements for 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS: Interstate Transport Provisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove elements of New Jersey's State Implementation Plan (SIP) revision submitted regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide (NO₂), 2010 Sulfur Dioxide (SO₂), 2011 Carbon Monoxide (CO), 2006 Particulate Matter of ten microns or less (PM₁₀), and 2012 Particulate Matter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements relating to

interstate transport provisions concerning the Prevention of Significant Deterioration of Air Quality (PSD) regulations, and visibility protection.

DATES: Comments must be received on or before **[Insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2016-0389 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

- I. Background
- II. EPA's Review
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of a new or revised NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the “infrastructure” SIP because the SIP ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” Section 110(a)(2)(D)(i) contains two subsections: (D)(i)(I) and (D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (commonly referred to as prong 1), or interfere with maintenance of the NAAQS in any other state (prong 2). Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state.

On March 12, 2008 (73 FR 16436 (March 27, 2008)), EPA promulgated a revised NAAQS for ozone. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm.

On October 15, 2008 (73 FR 66964 (Nov. 12, 2008)), EPA promulgated a new NAAQS, rolling 3-month average NAAQS for lead. The 2008 lead NAAQS is 0.15 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) maximum (not-to-be-exceeded). On January 22, 2010 (75 FR 6474 (Feb. 9, 2010)), EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. On June 2, 2010 (75 FR 35520 (June 22, 2010)), EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. On December 14, 2012 (78 FR 3086 (Jan. 15, 2013)), EPA promulgated a revised primary NAAQS for $\text{PM}_{2.5}$ for the annual standard. The revised standard was set at the level of $12\mu\text{g}/\text{m}^3$ calculated as an annual average, which is averaged over a three year period.

On September 21, 2006 (71 FR 61144 (Oct. 17, 2006)), EPA retained the primary and secondary 24-hour PM_{10} standard of $150\mu\text{g}/\text{m}^3$, not to be exceeded more than once per year on average over a 3-year period. The standard was initially promulgated on June 2, 1987 (52 FR 24634 (July 1, 2006)). The PM_{10} standard was also retained on December 14, 2012 (78 FR 3086 (Jan. 15, 2013)). On August 31, 2011, EPA retained the existing primary and secondary standards for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour standard average, neither to be exceeded more than once per year. The standards were initially established on April 30, 1971 (36 FR 8186).

On October 17, 2014 the New Jersey Department of Environmental Protection (NJDEP) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. Although not specifically required by 110(a)(1) since neither NAAQS was new or revised¹, the SIP revision also included infrastructure requirements for the 2006 PM₁₀ and 2011 CO NAAQS.

The submittal addressed all four prongs of the interstate transport requirements. On March 30, 2016, New Jersey withdrew the portion of their submittal addressing 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 Ozone NAAQS. EPA subsequently issued a Finding of Failure to Submit to New Jersey².

This proposed action pertains only to the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(II)(prongs 3 and 4). EPA will address the other portions of the October 17, 2014 infrastructure SIP submittal in a separate action.

II. EPA's review

Under 110(a)(2)(D)(i)(II) (prong 3) SIPs are required to have provisions prohibiting emissions that would interfere with measures required to be in another state's SIP under part C of the CAA to prevent significant deterioration of air quality.

¹ EPA notes that, when promulgated, the 2006 24-hour PM₁₀ NAAQS and the 2011 primary CO NAAQS were neither “new” nor “revised” NAAQS—they merely retained, without revision, prior NAAQS for those pollutants. Accordingly, promulgation of these NAAQS did not trigger a new obligation for New Jersey to make infrastructure SIP submissions.

² 81 FR 38963(June 15, 2016).

New Jersey's SIP is not approved with respect to the PSD permit program required by Part C of the CAA. As a result, EPA's regulations at 40 CFR 52.21 have been incorporated into New Jersey's applicable state plan. New Jersey has been delegated authority by EPA to implement 40 CFR 52.21. Although New Jersey has been successfully implementing the program, a state's infrastructure SIP submittal cannot be considered for approvability with respect to prong 3 until EPA has issued final approval of that state's PSD SIP, or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other state's measures to prevent significant deterioration of air quality. Therefore, we are proposing to disapprove New Jersey's 110(a) submissions for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS for prong 3 of 110(a)(2)(D)(i)(II) because New Jersey is currently subject to a Federal Implementation Plan (FIP) and does not have a PSD SIP. This disapproval will not trigger any sanctions or additional FIP obligation, since the FIP is already in place. This action will have no discernible effect on the current implementation of the PSD program in New Jersey, as the State is already implementing a well-established PSD program through EPA delegation.

In this action, EPA is proposing that, for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS, New Jersey satisfies the 110(a)(2)(D)(i)(II) requirement for visibility (prong 4). New Jersey addresses visibility protection requirements for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS through its Regional Haze SIP. EPA approved New Jersey's Regional Haze SIP submittal (77 FR 19 (Jan. 3, 2012)) as part of New Jersey's SIP. The regional haze rule requires

that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

In EPA's approval of New Jersey's Regional Haze Plan, EPA has determined that the plan contains emission reductions needed to achieve New Jersey's share of emission reductions that were determined to be reasonable through the regional planning process. Further, New Jersey's Regional Haze Plan ensures that emissions from the State will not interfere with the Reasonable Progress Goals for neighboring States' Class I areas.

Thus, New Jersey's approved Regional Haze SIP ensures that emissions from sources within the State are not interfering with measures to protect visibility in other states.

III. What action is EPA taking?

EPA is proposing to disapprove the portion of the October 17, 2014 New Jersey SIP submittal for 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS pertaining to prong 3 CAA section 110(a)(2)(D)(i)(II) regarding interstate transport of air pollution to prevent significant deterioration (PSD) of air quality in other states due to the State's lack of a state adopted PSD program. However, the disapproval will not trigger any sanctions or an additional FIP obligation since a PSD FIP is already in place.

EPA is proposing approval of the portion of the October 17, 2014 New Jersey SIP submittal for 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2011 CO, 2006 PM₁₀, and 2012 PM_{2.5} NAAQS pertaining to the CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4).

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by following the directions in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

July 18, 2016.

Dated: _____
Judith A. Enck,
Regional Administrator,
Region 2.

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